

Montana Water Court
PO Box 1389
Bozeman, MT 59771-1389
(406) 586-4364
1-800-624-3270
watercourt@mt.gov

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
GALLATIN RIVER BASIN (41H)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Morgan Family LLC; **Oak Capital; Pac West**

OBJECTORS: Morgan Family LLC; Farmers Canal Co

NOTICE OF INTENT TO APPEAR: State of Montana
University System (MSU); Four Corners County
Water & Sewer District

CASE 41H-0090-R-2022
41H 9027-00
41H 13164-00
41H 13167-00
41H 122647-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

The claim in this case appeared in the Preliminary Decree for Basin 41H with an objection from Farmers Canal Co. and a Notice of Intent to Appear from State of Montana University System ("MSU").

FINDINGS OF FACT

1. On October 14, 2022, Claimant/Objector Morgan Family LLC¹ and Objector Farmers Canal Co submitted a Stipulation wherein the parties agreed to changes and an information remark on the claims in exchange for withdrawal of objections.

2. NOIA parties did not initially file a response, however on November 21, 2022, Four Corners filed a Withdrawal of the NOIA and on January 18, 2023, MSU filed a withdrawal of its NOIA.

3. Prior to the issuance of the Preliminary Decree for Basin 41H, late objections were filed by Morgan Family to claims 41H 13164-00 and 41H 13167-00 to correct the period of diversion and period of use.

4. In support of the late objection, Morgan Family submitted declarations and affidavits that attested to April 20-October 14 as the historical period of use and diversion for both claims.

5. Objector Farmers Canal also agrees to this change and agrees that the historical point of diversion for claims 41H 13164-00 and 41H 13167-00 was through the Farmers Canal (ditch) in the SWNWNW Sec. 11, Twp. 3S, Rge. 4E. Claim 41H 13167-00 requires corrections to its point of diversion to reflect this.

6. Farmers Canal withdrew its objections to claims 41H 9027-00 and claim 41H 122647-00. These claims had no issue remarks.

7. The following information remark shall be placed on claims 41H 9027-00 and claim 41H 122647-00:

¹ On February 9, 2023, the Court received notice that Oak Capital Partners IV, LLC and Pac West Diversified, LP obtained an interest in Morgan Family's water rights in this case. DNRC 641 forms were also filed showing the split of the claims. These documents were filed after this Master's Report was completed and therefore the Court will not process the Split requests. The new parties are therefore added to the Case Caption and Service List via counsel Benjamin Sudduth.

THIS WATER RIGHT IS SUBJECT TO A PRIVATE AGREEMENT
LOCATED IN THE CASE AND CLAIM FILES.

CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. The degree or weight of evidence needed to contradict or overcome the prima facie proof statute is a preponderance of the evidence. *Burkhartsmeier et al. v. Burkhartsmeier et al.*, Case 40G-2, (MT Water Court Memorandum Opinion and Order Adopting Master's Report, Mar. 11, 1997). The Montana Supreme Court has defined preponderance as "a relatively modest standard that the statutory criteria are 'more probable than not' to have been met." *Hohenlohe v. State*, 2010 MT 203 ¶ 33, 357 Mont. 438, 240 P.3d 628.

3. The parties agree that these change resolves all objections.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends the Court make the changes specified above to correct the Preliminary Decree for this Basin.

A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended corrections have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service Via Electronic Mail:

Dana Elias Pepper
Bina R. Peters
River and Range Law, PLLC
PO Box 477
Bozeman, MT 59771-0477
(406) 599-7424
dana@riverandrangelaw.com
bina@riverandrangelaw.com
office@riverandrangelaw.com

William Fanning
Fanning Law PLLC
300 N. Willson Ave.
Suite 3007
Bozeman, MT 59715
(406) 220-2805
william@fanninglawpllc.com
becki@fanninglawpllc.com
accounts@fanninglawpllc.com

Benjamin S. Sudduth
Sudduth Law, PLLC
1050 East Main Street, Suite 3B
PO Box 507
Bozeman, MT 59771-0507
(406) 272-2390
benjamin@sudduthlaw.com

Service via USPS Mail:

Susan B. Swimley
Attorney and Counselor at Law
1807 W Dickerson Unit B
Bozeman, MT 59715

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 9027-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MORGAN FAMILY LLC
27600 ROCKY MOUNTIAN RD
BELGRADE, MT 59714

Priority Date: JUNE 10, 1882

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.50 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 245.00

Source Name: WEST GALLATIN RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWNW	11	3S	4E	GALLATIN
Period of Diversion:		MAY 1 TO OCTOBER 1				
Diversion Means:		HEADGATE				
Ditch Name:		FARMERS CANAL				
Period of Use:		MAY 1 TO OCTOBER 1				

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	158.00		E2	24	2S	4E	GALLATIN
2	32.00		W2	24	2S	4E	GALLATIN
3	55.00		SE	35	2S	4E	GALLATIN
Total:		245.00					

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 13164-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: MORGAN FAMILY LLC
27600 ROCKY MOUNTIAN RD
BELGRADE, MT 59714

Priority Date: JULY 1, 1890

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

Flow Rate: 2.75 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 183.00

Source Name: WEST GALLATIN RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWNW	11	3S	4E	GALLATIN

Period of Diversion: APRIL 20 TO OCTOBER 14

Diversion Means: HEADGATE

Ditch Name: FARMERS CANAL

Period of Use: APRIL 20 TO OCTOBER 14

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	23.00		W2SESE	23	2S	4E	GALLATIN
2	80.00		N2NW	25	2S	4E	GALLATIN
3	80.00		S2SE	23	2S	4E	GALLATIN
Total:	183.00						

Remarks:

THIS WATER RIGHT IS SUBJECT TO A PRIVATE AGREEMENT LOCATED IN THE CASE AND CLAIM FILES.

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H

Water Right Number: 41H 13167-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: MORGAN FAMILY LLC
27600 ROCKY MOUNTIAN RD
BELGRADE, MT 59714

Priority Date: MAY 1, 1867

Type of Historical Right: DECREED

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 1.35 CFS
FLOW RATE EQUALS 54 MINERS INCHES.

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 305.80

Source Name: WEST GALLATIN RIVER

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWNW	11	3S	4E	GALLATIN

Period of Diversion: APRIL 20 TO OCTOBER 14

Diversion Means: HEADGATE

Subdivision: RAINBOW SUB

Ditch Name: ALLISON-LEWIS DITCH

Period of Use: APRIL 20 TO OCTOBER 14

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	65.80		S2SE	23	2S	4E	GALLATIN
Subdivision:		RAINBOW SUB					
2	80.00		S2SW	24	2S	4E	GALLATIN
Subdivision:		RAINBOW SUB					
3	80.00		N2NW	25	2S	4E	GALLATIN
Subdivision:		RAINBOW SUB					
4	80.00		N2NE	26	2S	4E	GALLATIN
Subdivision:		RAINBOW SUB					
Total:	305.80						

THE PLACE OF USE BORDERS OR IS PART OF THE RAINBOW SUBDIVISION.

Remarks:

THIS WATER RIGHT IS SUBJECT TO A PRIVATE AGREEMENT LOCATED IN THE CASE AND CLAIM FILES.

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
GALLATIN RIVER
BASIN 41H**

Water Right Number: 41H 122647-00 STATEMENT OF CLAIM
Version: 3 -- POST DECREE
Status: ACTIVE

Owners: MORGAN FAMILY LLC
27600 ROCKY MOUNTIAN RD
BELGRADE, MT 59714

Priority Date: JUNE 15, 1866

Type of Historical Right: DECREED

Purpose (use): IRRIGATION
Irrigation Type: SPRINKLER/FLOOD

Flow Rate: 1.65 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 4 - MODERATELY LOW

***Maximum Acres:** 245.00

Source Name: WEST GALLATIN RIVER
Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNWNW	11	3S	4E	GALLATIN
Period of Diversion:	APRIL 1 TO OCTOBER 31					
Diversion Means:	HEADGATE					
Ditch Name:	FARMERS CANAL					
Period of Use:	APRIL 1 TO OCTOBER 31					

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	158.00		E2	24	2S	4E	GALLATIN
2	32.00		W2	24	2S	4E	GALLATIN
3	55.00		SE	35	2S	4E	GALLATIN
Total:	245.00						

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI RIVER DIVISION
GALLATIN RIVER - BASIN 41H
PRELIMINARY DECREE

CLAIMANTS: Morgan Family LLC

OBJECTORS: Morgan Family LLC; Farmers Canal Co.

NOTICE OF INTENT TO APPEAR: State of Montana
University System (MSU); Four Corners County Water &
Sewer District

CASE 41H-0090-R-2022

41H 9027-00

41H 13164-00

41H 13167-00

41H 122647-00

STIPULATION

Claimant Morgan Family, LLC ("Morgan Family") and Objector Farmers Canal Company ("FCC"), stipulate as set forth below:

1. Pursuant to Mont. Code Ann. § 85-2-221, a valid Statement of Claim was filed for the water right claim numbers identified above.
2. Pursuant to Mont. Code Ann. § 85-2-227, the Statements of Claim for these water rights constitute prima facie evidence of their content.
3. Pursuant to Mont. Code Ann. § 85-2-233, FCC filed Notice(s) of Objection to these water rights based on the elements of period of use/period of diversion.

The parties further agree that:

4. The period of use and period of diversion for claims 41H 13164-00 and 41H 13167-00 shall be corrected to "April 20 to October 14". Terms of water delivery during this period of use and period of diversion are provided for in the Delivery Agreement referenced herein.
5. The period of use and period of diversion for these water rights is subject to a private agreement between the parties, in the form of a Delivery Agreement, and the following information remark shall be added to the Statements of Claim:

THIS WATER RIGHT IS SUBJECT TO A PRIVATE
AGREEMENT LOCATED IN THE CASE AND CLAIM
FILES.

6. The point of diversion of claim 41H 13167-00 shall be corrected to the SWNWNW in Section 11, Twp 3S, Rge 4E, Gallatin County to be consistent with the point of diversion described on the Preliminary Decree abstract of claim 41H 13164-00.
7. Other than the corrections described by this Stipulation, all remaining elements of the corrected claims and all elements of the remaining claims shall remain as they were decreed.
8. The parties agree that upon the Court's acceptance of this Stipulation in a Master's Report and Order Adopting Master's Report, FCC's objection, and any objections, counterobjections and notices of intent to appear between the parties are resolved and thus deemed withdrawn.
9. A copy of this Stipulation may be executed by each party separately, and when each has executed a copy thereof, the copies, taken together shall be deemed a full and complete document. A facsimile or scanned signature shall be treated as an original.
10. The parties agree that this document embodies the entire agreement and replaces the previous Stipulation signed January 30, 2020.

I/We declare under penalty of perjury and under the laws of the state of Montana that the foregoing is true and correct.

IN WITNESS WHEREOF, each of the parties sign this Agreement intending to be bound by it.

Morgan Family, LLC

Marilee Morgan Langohr

Printed: Marilee Morgan Langohr

Title: partner/member

Date: 9-8-2022

Farmers Canal Company

William J. Tataraka

Printed: William J. Tataraka

Title: Pres

Date: 10-11-22

**WATER DELIVERY AGREEMENT
FARMERS CANAL COMPANY OF GALLATIN COUNTY
AND MORGAN FAMILY, LLC**

This Water Delivery Agreement ("Agreement") is entered into this 22 day of April, 2021, (the "Effective Date") by and between **Farmers Canal Company** of Gallatin County, a Montana not for profit corporation and **Morgan Family, LLC** ("Morgan Family"), (collectively the "Parties").

RECITALS

WHEREAS Farmers Canal Company operates and maintains an irrigation delivery system known as the Farmers Canal, which diverts and distributes water from the West Gallatin River and other sources in Gallatin County, Montana, and

WHEREAS the Farmers Canal is the historical and contemporary means of water conveyance for Farmers Canal Company water rights which are diverted from the West Gallatin River into the Farmers Canal headgate located in the SWNWNW Section 11, Township 3 South, Range 4 East, and delivered to Farmers Canal Company shareholders (called "Share Water" in this Agreement), and

WHEREAS in addition to Farmers Canal Company shares, Morgan Family also holds the following individually owned water rights to use water from the West Gallatin River, diverted at the Farmers Canal headgate: 41H 9027-00, 41H 13164-00, 41H 13167-00, and 41H 122647-00 ("Morgan Family's Privately Owned Water Rights"), and

WHEREAS Farmers recognizes the long and continual use of the above referenced private decreed water rights in Farmers canal and seeks through this agreement to ~~formalize~~ the relationship between the decreed water rights listed above and its conveyance system, and

WHEREAS the Farmers Canal is the historical and contemporary means of water conveyance for other water rights not owned by Farmers Canal Company, including but not limited to, Morgan Family's Privately Owned Water Rights, which are also diverted from the West Gallatin River into the Farmers Canal headgate located in the SWNWNW Section 11, Township 3 South, Range 4 East.

NOW THEREFORE the Parties agree as follows:

Section 1: PURPOSE

- A. Recitals Incorporated. The Recitals set forth above are incorporated herein by reference.
- B. Delivery Agreement. The purpose of this Agreement is to provide for the diversion and delivery of water under the Morgan Family's Privately Owned Water Rights water through the Farmers Canal.
- C. No Water Rights Created. Nothing under this Agreement shall be construed to create a water right where one does not legally exist. Similarly, nothing under this Agreement shall entitle either of the Parties to assert a claim to or interest in either's water shares, contract water rights, or individually held water rights.

Section 2: TERM

- A. Term and Renewal. The initial term of this Agreement shall run from the Effective Date through December 31, 2025. Thereafter, this Agreement shall renew annually on January 1 and continue on a year-to-year basis unless terminated in accordance with the Termination section below.

Section 3: WATER MEASUREMENT AND ADMINISTRATION

- A. Good Faith/ Best Efforts. Farmers Canal Company consents and agrees to exercise good faith and reasonable best efforts to divert and convey Morgan Family's Privately Owned Water Rights through Farmers Canal provided that such diversion and conveyance is consistent with Company policies, Morgan Family's Privately Owned Water Rights, and all other applicable laws. Farmers Canal Company recognizes Morgan Family has the legal right to fully exercise its Privately Owned Water Rights and that such rights shall be conveyed, when requested pursuant to the parameters of the Privately Owned Water Right and Section 3.F., below, if capacity is available in the Farmers Canal.

- B. Record Keeping. Farmers Canal Company shall record diversion of Morgan Family's Privately Owned Water Rights diverted at the Farmers Canal Company headgate.
- C. Direction from Court. Pursuant to any court or administrative order requiring enforcement or administration of any source that is the source of any of Morgan Family's Privately Owned Water Rights is in effect during the time Farmers Canal Company is carrying out its obligations under this Agreement, Farmers Canal Company shall carry out its obligations hereunder pursuant to the court's direction.
- D. Conveyance Loss Calculation. Morgan Family recognizes that the amount diverted at the West Gallatin River under its Privately Owned Water Rights is subject to a deduction of conveyance losses. Conveyance losses from Morgan Family's Diversion Point to Morgan Family's Delivery Point shall be subtracted by the Superintendent or Ditch Tender appointed by Farmers Canal Company as necessary. Conveyance losses shall be subtracted equitably from Morgan Family's Privately Owned Water Rights, all other privately owned water rights conveyed in the canal, and stored water from Hyalite Reservoir (by virtue of shares in Middle Creek Water Users Association) in the same manner losses are applied to all other water conveyed in the canal, including delivery of Share Water to shareholders.
- E. Water Delivery Season. Farmers Canal Company shall have sole control to make operational decisions as to when it will turn water on and off in the Farmers Canal based on the irrigation needs of its shareholders (the "Water Delivery Season").
- F. Delivery Rights. Morgan Family shall enjoy the same right of any shareholder to request the delivery of its water outside of Farmers Canal Company's Water Delivery Season, as provided for in Article VII, Section 8, of the Farmers Canal Company bylaws (as the same may be amended from time to time, or pursuant to its successor provision(s)). Such delivery shall be consistent with the parameters of Morgan Family's Privately Owned Water Rights, all other applicable laws, and upon Farmers Canal having capacity to make the requested delivery.

- G. Compliance with Laws. The Parties agree to comply with all state, federal, and local laws, rules, regulations, and permit conditions.

Section 4: BYLAWS

- A. Observance of Bylaws. Morgan Family shall abide by the Farmers Canal Company bylaws. A copy of the Farmers Canal Company bylaws may be obtained by contacting the Farmers Canal Company representative at the address provided in the Notice section below.

Section 5: COMPENSATION AND INVOICE

- A. Compensation and Invoicing. Morgan Family shall pay Farmers Canal Company an annual fee per miner's inch. Fees shall be invoiced and paid annually in advance of the irrigation season based on the number of miner's inches that are reflected on Morgan Family's Privately Owned Water Rights abstracts as being diverted through the Farmers Canal. Consistent with the Bylaws, water shall not be delivered to users with delinquent accounts.
- B. Fees/ Rate Setting. Fees shall be assessed on a per Miner's Inch (MI) basis. Fees per MI for delivery of Morgan Family's Privately Owned Water Rights shall not exceed rates charged per MI for Share Water for Shareholders. Said fee is set at \$2.50 per inch for the 2021 season with a \$50.00 minimum and like Share Water, is subject to periodic adjustment as noticed and adopted at the annual meeting. Rates charged per inch for Morgan Family's privately owned water rights will not exceed rates charged per inch for share water.
- C. Notice of Meeting. Morgan Family shall be provided notice of the annual meeting at the address listed on its water rights abstract. Morgan Family shall have the right to attend the annual meeting.
- D. Notice of Yearly Rate. The rate per Miner's Inch shall be determined by the Directors of Farmers Canal Company at the annual meeting. Farmers Canal Company has no obligation to deliver water to Morgan Family if they are in arrears on their account.

Section 6: RECIPROCAL INDEMNIFICATION / HOLD HARMLESS

- A. Water User Indemnity. Morgan Family shall indemnify, defend, and hold Farmers Canal Company, and Farmers Canal Company's officers, directors, employees, shareholders, contractors, and agents harmless from and against all claims, losses, damages, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from the delivery or non-delivery of water for Morgan Family's Privately Owned Water Rights under this Agreement. The Morgan Family's agreement to hold harmless, defend and indemnify shall not apply to the negligence or willful misconduct of Farmers Canal Company or Farmers Canal Company's officers, directors, employees, shareholders, contractors, and agents.
- B. Farmers Indemnity. Farmers Canal Company shall indemnify, defend, and hold Morgan Family harmless from all claims, losses, damages, liabilities, and expenses (including reasonable attorneys' fees and costs) arising from ownership, operation and maintenance of the Farmers Canal system, or relating to the negligence or willful misconduct of Farmers Canal Company or Farmers Canal Company's officers, directors, employees, shareholders, contractors, and agents. Farmers Canal Company's agreement to hold harmless, defend and indemnify shall not apply to the negligence or willful misconduct of Morgan Family or Morgan Family's officers, directors, employees, contractors, and agents.

Section 7: FORCE MAJEURE

- A. Definition. For the purposes of this Agreement an event of force majeure is an event or circumstance which is beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent, including, without limitation the following events and circumstances: earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity.
- B. No Responsibility. Neither party is responsible for any failure to perform its obligations under this Agreement if it is prevented or delayed in performing those obligations by an event of force majeure.
- C. Notification. Where there is an event of force majeure, the party prevented from or delayed in performing its obligations under this Agreement must

immediately notify the other party describing the event of force majeure and the reasons for the event of force majeure preventing that party from, or delaying that party in performing its obligations under this Agreement and that party must use its reasonable efforts to mitigate the effect of the event of force majeure upon its performance of the Agreement and to fulfill its obligations under the Agreement.

- D. Recommence Performance. Upon completion of the event of force majeure the party affected must as soon as reasonably practicable recommence the performance of its obligations under this Agreement.
- E. Prior Liability Intact. An event of force majeure does not relieve a party from liability for an obligation which arose, and should have been performed, before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event.

Section 8: CHOICE OF LAW AND DISPUTE RESOLUTION

- A. Choice of Law. This Agreement shall be construed under the laws of the State of Montana.
- B. Dispute Resolution. If a dispute arises as to the terms or conditions of this Agreement, the dispute shall be submitted to the Board of Directors of Farmers Canal Company in writing at the address provided in the most current bylaws. The Board shall place issues raised in this manner on the next Board meeting agenda and provide notice to the parties in the dispute. The Parties agree to pursue mediation of any dispute that cannot be resolved through informal negotiations. In the event of any dispute, each party shall bear their own attorney's fees and costs.

Section 9: TERMINATION & REMEDIES

- A. Delivery Curtailment. Farmers Canal Company may refuse delivery of water if water delivery fees are delinquent for 60 days after billing or for any uncured violation of any other provision of this Agreement that threatens Farmers Canal Company deliveries to its shareholders, or poses a risk to Farmers Canal Company delivery system.

- B. Agreement Termination. Farmers Canal Company may terminate the Agreement if water delivery fees are more than 60 days in arrears or for any uncured violation of any other provision of this Agreement that threatens Farmers Canal Company deliveries to its shareholders or poses a risk to Farmers Canal Company delivery system. Termination of this Agreement shall occur only after Morgan Family has received written notice followed by a 30-day period to cure the noticed deficiency.
- C. Referral to Board. Any disagreements with decisions to terminate may be brought to the Board of Directors of Farmers Canal Company.
- D. Right to Reinstate. Farmers Canal Company may make a determination not to terminate this Agreement if Morgan Family can show full compliance or a time schedule for compliance that is satisfactory to Farmers Canal Company within the 30-day notice period.
- E. Water User's Right to Terminate. Morgan Family may terminate this Agreement, if Morgan Family's Privately Owned Water Rights are terminated, withdrawn, changed, or for other lawful reason, upon 30 days written notice to the Board of Directors of Farmers Canal Company.

Section 10: NOTICE

- A. All notices shall be provided to the PARTIES at the following addresses:

Farmers Canal Company
FARMERS CANAL CO
BOZEMAN, MT 59719
PO BOX 10686

Morgan Family, LLC:
As per the name and address listed
on party's water right abstract(s).

All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed given if mailed, by certified mail, return receipt requested, or by overnight service having a record of receipt to the addresses indicated below.

//
//

IN WITNESS WHEREOF, each of the parties sign this Agreement intending to be bound by it.

Farmers Canal Company

William Tetzuka

Date: 5-13-21

Morgan Family, LLC

Craig Morgan

Date: 4-22-21

Date: _____

Printed:

CRAIG MORGAN

Title:

member